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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/528,236

03/18/2005

James R. Ellsworth

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CLARK & BRODY

1090 VERMONT AVENUE, NW

SUITE 250

WASHINGTON, DC 20005

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT

PAPER NUMBER

3781

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/528,236	<b>Applicant(s)</b> ELLSWORTH ET AL.	
	<b>Examiner</b> STEPHEN CASTELLANO	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3-18-5, 3-6-7</u> . | 6) <input type="checkbox"/> Other: ____.  |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 4 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Little.

Little discloses a container 10 comprising a base portion (lower section 14) forming a first chamber (well 34 delimited by end wall 18, side walls 16, bottom wall element 40 and partition 38) and a second chamber (compartment 36 delimited by end wall 19, side walls 16, compartment bottom 42 and partition 38), the chambers are connected by a bridge (V-shaped slot 38) that allows fluid in the first chamber to flow to the second chamber when the container is in a predetermined orientation (tilted to the right as shown in Fig. 2), one of the chambers (second chamber) includes a narrow bottom portion and a sloped floor portion arranged to direct fluid to the bottom portion.

Re claim 3, the sloped bottom underside of compartment bottom 42 forms a portion of the means for orienting and a cam surface. Re claim 4, the portions of the side walls 16 and end wall 19 that extend below the compartment bottom 42 defines another portion of the means for orienting and a skirt.

Re claim 6, the container comprises a lid (upper section 22) covers the first and second chambers, the lid has a raised portion (upper portion 54 with opening 44 and

plug 92) that covers the first chamber and a recessed portion (metal cover 56) that covers the second chamber and an intermediate wall (the wall that extends vertically below the upper surface of metal cover 56 aligned with pivot 57, 58 of the metal cover) that forms a passage with the bridge for receiving the fluid.

Re claim 7, means for providing sterile access to the first and second chambers is provided by plug 92 with central opening (access port) and the opening (access port) for brush handle 74 through the metal cover.

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Wells et al. (Wells) (Re 38757).

Wells discloses a container as shown in Fig. 2 comprising a base portion forming two chambers 6, 8, the chambers are connected by a bridge 7 that allows fluid in the first chamber to flow to the second chamber when the container is in a predetermined orientation, the tilting as shown and discussed, chamber 8 includes a narrow bottom and a sloped floor.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wells in view of Pichereau.

Wells discloses the invention except for the sloped floor being helical and the helical skirt. Pichereau teaches an inkstand having compartments having sloped helical floors and helical skirts which are capable of acting as a means for orienting. It would

have been obvious to modify the orientation of the compartments to be circumferentially oriented to one another and to have the helical sloped bottoms and helical skirts to provide a collection well for the liquid while the skirt base is able to stably support the container in an upright position.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Little in view of Coleman.

Little discloses the invention except for the floating divider. Coleman teaches a floating divider as shown in Fig. 8, 8A having an opening 82 allowing passage of centrifuge fluids and as shown in Fig. 8 the divider includes a protuberance (the bottom portion 148 of the divider) having the opening.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEPHEN CASTELLANO whose telephone number is (571)272-4535. The examiner can normally be reached on M-F 9-3.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/  
Primary Examiner  
Tech Center 3700

sjc